

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: David & Dorene Brokl )  
Dist. 3, Map 123A, Group C, Control Map 123A, )  
Parcel 8.00, S.I. 000 )  
Commercial Property )  
Tax Year 2006 )  
Lauderdale County

## INITIAL DECISION AND ORDER DISMISSING APPEAL

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$7,800	\$14,000	\$21,800	\$8,720

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 24, 2007 in Ripley, Tennessee. In attendance at the hearing were David Brokl, the appellant, Jerry Buckner, Lauderdale County Property Assessor, and Bryan Kinsey, an appraiser with the Division of Property Assessments.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a three (3) acre tract improved with a residence and a separate building used to operate a gift shop. The taxpayer purchased subject property on May 31, 2001 for \$90,000.

For assessment purposes, subject parcel has been split into two parts. The special interest 000 portion includes the residence and 2.5 acres. It has been appraised at \$68,300 and subclassified residentially. The special interest 001 portion includes the gift shop and one-half (1/2) acre. It has been appraised at \$21,800 (land at \$7,800 and building at \$14,000) and subclassified commercially.

The taxpayer does not contest the appraisal or subclassification of special interest 000. The taxpayer does contest, however, the commercial subclassification of the one-half (1/2) acre allocated to special interest 001.<sup>1</sup>

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact the disputed appraisal was not appealed to the Lauderdale County Board of Equalization. Instead, the taxpayer filed a direct appeal with the State Board of Equalization on October 9, 2006.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of

<sup>1</sup> Prior to the 2006 countywide reappraisal, all three (3) acres had been subclassified residentially.



Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

*Associated Pipeline Contractors, Inc.*, Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Lauderdale County Board of Equalization.

The taxpayer testified that he was not aware that the appraisal and subclassification of subject property had changed until he received his tax bill in early October of 2006. Mr. Brokl stated that he did not receive the assessment change notice the assessor mailed on April 21, 2006.

The administrative judge finds that the validity of an assessment change notice does not depend on whether it is actually received by the taxpayer. Rather, such notice must merely be "addressed to the last known address of the taxpayer, and shall be effective when mailed." Tenn. Code Ann. § 67-5-508(a)(3). The administrative judge finds the assessor's unrefuted proof established that the assessment change notice, a copy of which was introduced into evidence as exhibit #3, was timely mailed and correctly addressed.

The administrative judge finds that the Assessment Appeals Commission has had numerous occasions to reject arguments essentially identical to Mr. Brokl's. For example, in *Michael & Stephanie Davis* (Davidson Co., Tax Year 1993), the Assessment Appeals Commission held that "there was testimony only that the [assessment change] notice was not received, and we find no basis **in this fact alone** to demonstrate reasonable cause" for



the taxpayer's direct appeal to the State Board. Final Decision and Order at 1. [Emphasis added.] Similarly, in *Charles R. Coats* (Davidson Co., Tax Year 2001), the Commission ruled in pertinent part as follows:

The law does not require the assessor to prove receipt of the notice, only that the notice was sent to the correct address per the assessor's records. That was apparently done in this case, and therefore we find no basis to excuse the taxpayer's failure to act timely in appealing to the boards of equalization.

Final Decision and Order at 2. See also *Elizabeth and William Benson* (Shelby Co., Tax Year 2001) wherein the Assessment Appeals Commission observed that "[a]llegations that mail was not received normally do not alone support a finding of reasonable cause, unless it is also established that there is a problem with mail delivery." Final Decision and Order at 1. The administrative judge finds that in response to his query, Mr. Brokl testified he does not have any ongoing problems with mail delivery.<sup>2</sup>

It should also be noted that in accordance with Tenn. Code Ann. § 67-5-508(a) the assessor of property caused notice to be published in the local newspaper concerning (1) the dates the county board would be meeting; and (2) the fact his records were open for public inspection.

Given the foregoing, the administrative judge cannot find reasonable cause for the taxpayer's failure to appeal to the Lauderdale County Board of Equalization. Accordingly, the administrative judge has no choice except to dismiss this appeal for lack of jurisdiction.

The administrative judge finds it technically unnecessary to address the merits of this appeal. Nonetheless, the administrative judge will briefly do so in order to expedite any future appeals.

The administrative judge finds that the taxpayer stressed subject property was not zoned commercially. The administrative judge finds that zoning is not dispositive of subclassification for ad valorem tax purposes. See Tenn. Code Ann. § 67-5-801 which provides in pertinent part as follows:

(a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use. . .

\* \* \*

(b) Where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses. . .

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<sup>2</sup> Compare *Mary M. Headrick and Detlef R. Matt* (Assessment Appeals Commission, Knox Co., Tax Year 1993, Order Recognizing Jurisdiction).



The administrative judge finds the building housing the gift shop has a footprint of 2,088 square feet. The administrative judge finds that an additional area measuring 10' x 20' is used for parking. Respectfully, it appears that significantly less than one-half (1/2) acre is used in conjunction with the gift shop. The administrative judge would recommend that the assessor of property consider adjusting this component of his appraisal for tax year 2007 when he picks up the paving presently omitted from the appraisal.

#### ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$7,800	\$14,000	\$21,800	\$8,720


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 1st day of May, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: David & Dorene Brokl  
Jerry Buckner, Assessor of Property